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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/981,165	10/17/2001	Steve Dispensa	1585	7084
28004	7590	10/02/2006	EXAMINER	
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			ART UNIT	PAPER NUMBER
			2154	

DATE MAILED: 10/02/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/981,165

Applicant(s)

DISPENSA ET AL.

Examiner

Ashok B. Patel

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

1. Claims 1-24 are subject to examination.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

a. Claim 1 recites the limitation "the performance management system" in lines 5, 7 and 10.

There is insufficient antecedent basis for this limitation in the claims.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1-24 are rejected under 35 U.S.C. 102(e) as being anticipated by

Booman et al. (hereinafter Booman) (US 6, 216, 169 B1)

Referring to claim 1,

Booman teaches a method of operating a Remote Monitoring (RMON) management system (Fig.1, col. 6, line 15-30), the method comprising:

generating and transmitting a first instruction for an RMON probe to request a first portion of RMON information ;

receiving and storing the first portion of the RMON information in memory in the performance management system (col. 5, line 32-38, "Once elements in the network have accumulated the data, they can send the data to the remote workstations, i.e., the workstations that process the data in response to the request. Alternatively, the remote workstations can retrieve the data from the elements that accumulated the data. In other cases, the remote workstations themselves accumulate the data.", col. 15, line 59-65, "Furthermore, though we have made a distinction between the master workstation and the remote workstations, every remote workstation, or at least some of the remote workstations, can include components and software to function as both a master and remote workstation. Thus the network manager can generate reports from a number of locations within the network.");

generating and transmitting a second instruction for an RMON manager configured to access the RMON probe to request a second portion of the RMON information; receiving and storing the second portion of the RMON information in the memory in the performance management system (col. 7, line 4-15, "The data recorded by the probes in portion 20 of the network is periodically (e.g., every 10 minutes) polled by and stored in remote workstation 22. Similarly, data recorded by other probes in the network are polled and stored by other remote workstations located

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in other portions of the network. Every probe in the network has its data polled and stored by at least one remote workstation. Each one the remote workstations that stores data, is also equipped with software to perform operations on the data and to receive and process instructions (e.g., a multicast or a request) from master workstation 24, as is described in greater detail below.”, and, col. 5, line 32-38, “Once elements in the network have accumulated the data, they can send the data to the remote workstations, i.e., the workstations that process the data in response to the request. Alternatively, the remote workstations can retrieve the data from the elements that accumulated the data. In other cases, the remote workstations themselves accumulate the data.”, col. 15, line 59-65, “Furthermore, though we have made a distinction between the master workstation and the remote workstations, every remote workstation, or at least some of the remote workstations, can include components and software to function as both a master and remote workstation. Thus the network manager can generate reports from a number of locations within the network.”);

generating and transmitting a third instruction for an RMON database configured to be accessed by the RMON manager to request a third portion of the RMON information; and receiving and storing the third portion of the RMON information in memory in the performance management system (col. 5, line 32-38, “Once elements in the network have accumulated the data, they can send the data to the remote workstations, i.e., the workstations that process the data in response to the request. Alternatively, the remote workstations can retrieve the data from the elements that accumulated the data. In other cases, the remote workstations themselves accumulate

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the data.", col. 15, line 59-65, "Furthermore, though we have made a distinction between the master workstation and the remote workstations, every remote workstation, or at least some of the remote workstations, can include components and software to function as both a master and remote workstation. Thus the network manager can generate reports from a number of locations within the network." **Note:** Booman offers various configurations of the performance management system, including in col. 4, line 37-46, "For clarity, we will refer to the workstation sending the request as the "master workstation" and the workstations storing the data as the "remote workstations". However, for a subsequent report, the workstation that is the master workstation may change, and a workstation that was previously a remote workstation may become the master workstation. In principle, every remote workstation may also be a master workstation. Also, if the master workstation stores data, it will be both a master and remote workstation." The performance management system is offered as indicated in col. 3, line 64-col.4, line 5, "(3) We refer to information desired by a user and its display as a "report". Typically, a report is specific to a subset of elements, which we refer to as a "group". For example, if the workstations store data about the performance of various applications running on nearby servers, the group can be the performance data from servers running a specific application, the performance data from servers running the applications for a specific set of users, or the performance data for servers in a specific geographic region.")

Referring to claim 2,

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Booman teaches the method of claim 1 wherein the RMON information comprises datalink layer information. (col . 6, line 55-col.7, line 3).

Referring to claim 3,

Booman teaches the method of claim 1 wherein the RMON information comprises application layer information. (col . 6, line 55-col.7, line 3).

Referring to claim 4,

Booman teaches the method of claim 1 wherein the RMON information is based on a media access control address. (col . 6, line 55-col.7, line 3).

Referring to claim 5,

Booman teaches the method of claim 1 wherein the RMON information comprises a number of users. (col . 3, line 51-63).

Referring to claims 6, 7 and 8,

Booman teaches the method of claim 1 wherein the RMON information comprises a number of bytes transmitted, and wherein the RMON information comprises download speed, and wherein the RMON information comprises bits per second. (col. 7, line 65-, col. 8, line 15)

Referring to claim 9,

Claim 9 is a claim to software product on a software storage medium storing instructions to carry out the method of claim 1 . Therefore claim 9 is rejected for the reasons set forth for claim 1 .

Referring to claim 10,

Claim 10 is a claim to software product on a software storage medium storing

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instructions to carry out the method of claim 2. Therefore claim 10 is rejected for the reasons set forth for claim 2.

Referring to claim 11,

Claim 11 is a claim to software product on a software storage medium storing instructions to carry out the method of claim 3. Therefore claim 11 is rejected for the reasons set forth for claim 3.

Referring to claim 12,

Claim 12 is a claim to software product on a software storage medium storing instructions to carry out the method of claim 4. Therefore claim 12 is rejected for the reasons set forth for claim 4.

Referring to claim 13,

Claim 13 is a claim to software product on a software storage medium storing instructions to carry out the method of claim 5. Therefore claim 13 is rejected for the reasons set forth for claim 5.

Referring to claims 14, 15 and 16,

Claims 14, 15 and 16 are claims to software product on a software storage medium storing instructions to carry out the method of claims 6, 7 and 8. Therefore claims 14, 15 and 16 are rejected for the reasons set forth for claims 6, 7 and 8.

Referring to claim 17,

Claim 17 is a claim to Remote monitoring management system adapted to carry out the Method of claim 1. Therefore claim 17 is rejected for the reasons set forth for claim 1 .

Referring to claim 18,

Claim 18 is a claim to Remote monitoring management system adapted to carry out the method of claim 2. Therefore claim 18 is rejected for the reasons set forth for claim 2.

Referring to claim 19,

Claim 19 is a claim to Remote monitoring management system adapted to carry out the method of claim 3. Therefore claim 19 is rejected for the reasons set forth for claim 3.

Referring to claim 20,

Claim 20 is a claim to Remote monitoring management system adapted to carry out the method of claim 4. Therefore claim 20 is rejected for the reasons set forth for claim 4.

Referring to claim 21,

Claim 21 is a claim to Remote monitoring management system adapted to carry out the method of claim 5. Therefore claim 21 is rejected for the reasons set forth for claim 5.

Referring to claims 22, 23 and 24,

Claims 22, 23 and 24 are claims to Remote monitoring management system adapted to carry out the method of claims 6, 7 and 8. Therefore claims 22, 23 and 24 are rejected for the reasons set forth for claims 6, 7 and 8.

Conclusion

Examiner's note: Examiner has cited particular columns and line numbers in the references as applied to the claims above for the convenience of the applicant. Although the specified citations are representative of the teachings of the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the applicant in preparing responses, to fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the Examiner.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ashok B. Patel whose telephone number is (571) 272-3972. The examiner can normally be reached on 8:00am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John A. Follansbee can be reached on (571) 272-3964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Abp

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